IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5042 of 2007

Shri Pralhad Baburao Satale — Petitioner
Vs.
Shri Ramchandra S. Desai — Respondent

Mr.S.S.Pakale for petitioner.
Mr.M.S.Topkar for respondent no.1.

CORAM: B.H.MARLAPALLE, J.

November 28, 2007.

P.C.

1. Heard Mr.Pakale, the learned counsel for the petitioner and Mr.Topkar, the learned counsel for the respondent no.1. Respondent no.2 be deleted forthwith.

2. This petition impugns the award of calculation of money dues in IDA Application No.48 of 1994 filed under Section 33C(2) of the Industrial Disputes Act, 1947 on 29/1/2007 and hence it is being treated as a petition under Article 227 of the Constitution.

3. The respondent no.1 approached the Labour Court with an application under Section 33C(2) of the I.D. Act and claimed that (a) he had worked for the period from 1/1/1986 to 31/12/1993, (b) he was paid

only the basic salary on the presumption that he was working on daily wages basis, (c) the Minimum Wages Act, 1948 was made applicable to the powerloom industry from 1971 onwards and, therefore, he was entitled for the payment of special allowance over and above the basic wages paid to him and (d) he had worked every day extra for four hours and, therefore, he was entitled for over time for these extra hours on daily basis. He claimed that by way of special allowance he was entitled to receive from the employer a total sum of Rs.76,112/-. In the statement of calculation he did not provide for the details of over time wages he had claimed. In support of his claim he filed an affidavit by way of examination-in-chief and he was cross-examined on the same.

4. The petitioner - employer contested the application by filing a reply and denied that the applicant was working from 1/1/1986 to 31/12/1993 and he maintained that the applicant had worked with him only for a few months from January 1993 to April 1993 and during the said period he was engaged on daily wages basis worker and was paid an amount of Rs.400/- per week. The employer further claimed that the

applicant having been employed on piecemeal basis he was not entitled for a special allowance. He further stated that the applicant had borrowed an amount of Rs.10,000/- by way loan for his agricultural development and he did not return the said amount and thus it was the employer who had to receive some money from the applicant rather than giving him any difference in the pay bills as claimed by the applicant. By way of evidence, he filed his affidavit in examination-in-chief on which he was cross-examined. In his cross-examination he stated that the applicant was employed on piece rate basis and he could not work for any extra hours so as to make him eligible for over time. He denied the contention that the applicant was working for 12 hours a day and operating four looms at a time. The learned Judge of the Labour Court by taking into consideration the evidence of both the parties and the award passed in Reference IDA No.34 of 1995 between the same parties, turned down the contentions of the petitioner-employer that the applicant had worked only from January 1993 till April 1993. The award in Reference IDA No.34 of 1995 was passed on 4/8/2006 i.e. before the impugned award has been passed.

5. Mr.Pakale, the learned counsel for the petitioner submitted that beyond the oral testimony of the applicant, there was nothing on record that he was in regular employment of the petitioner from 1/1/1986 to 31/12/1993. Mr.Pakale referred to the affidavit filed by the petitioner - employer by way of his evidence and pointed out that the applicant was working only from January to April 1993 and, therefore, it was necessary for the Labour Court to accept that the applicant worked only for a period from January to April 1993. He also referred to the vouchers which were brought on record by the employer. Mr.Pakale also placed reliance on the judgment in the case of Union of India & anr. Vs. Kankuben (Dead) by LRs. & ors. **[(2006) 9 SCC 292],** in support of his contentions that the Labour Court while dealing with the application under Section 33C(2) of the I.D. Act is a Court of execution and it cannot entertain and decide on a claim which is contested or disputed and it can only determine the monies legally payable or payable under a contract of employment / settlement.

6. Mr.Topkar, the learned counsel for the

applicant has supported the impugned order and has also pointed out that the award passed in Reference IDA No. 34 of 1995 on 4/8/2006 was subject matter of challenge before this Court in Writ Petition No.1469 of 2007 and the said petition came to be rejected by a reasoned order dated 24/9/2007. Mr.Topkar also pointed out that there was no reason for the Labour Court to accept the claim application only from January 1988 and in any case the applicant workman has not challenged the impugned award and, therefore, Mr. Topkar submitted that it does not call for any interference as it being just and proper.

7. Let us first consider the grievance of Mr.Pakale that the applicant did not work from January 1986 onwards and that he had worked only for a few months from January to April 1993. The employer in his affidavit of evidence in regard to record like attendance register, wages register so as to support his contentions that the applicant had worked only from January to April 1993 and stated as under:

"As no records viz. Pay-bill, Muster-Roll,

Cloth-Register, Income and Expenditure Register are maintained in my factory, I cannot produce the same. Majority of the Powerloom owners like me in Ichalkaranji do not maintain any kind f documentary record and, therefore, I have also not maintained any record. As regards the salary vouchers of the applicant-workman, I will search for salary voucher records for the period for which he was working i.e. for the period of four months from January 1993 to April 1993 and if I find the same, then I shall produce the same on the next date. Leave maybe granted to produce appropriate additional evidence in this regard."

It appears that while opposing the demand referred for adjudication in Reference IDA No.34 of 1995 the employer had filed similar affidavit and had opposed the demand of reinstatement. While rejecting the employer's story that the workman had worked only for the period from January to April 1993, the learned Judge of the Labour Court in his award dated 4/8/2006 passed in Reference IDA No.34 of 1995 observed that in affidavit Exhibit U-19 he had emphatically stated

that he was working since 1/1/1986 and the said statement had gone unchallenged. The workman had also made an application at Exhibit U-20 for production of the documents like muster roll from 1986 to 1993 and wage register. He did not stop here alone but placed reliance on the depositions of the employer's witness Smt.Banabai Patil at Exhibit C-22 and the said witness in her cross-examination admitted that the first party was maintaining muster roll and wage register since beginning and she was also given attendance card. This evidence of the employee's witness falsified the statement that in Ichalkaranji powerloom industry there was a practice of not maintaining any such registers and he was also following the said practice. The Labour Court rightly relied upon the findings recorded in the award dated 4/8/2006 passed in Reference IDA No.34 of 1995 and Mr.Topkar is right in his contentions that the said award has received its finality on account of the order passed by this Court on 24/9/2007 rejecting summarily Writ Petition No.1469 of 2007. It does not lie in the mouth of the employer now to say that there was no evidence on record beyond the mere statement of the applicant - workman that he worked from 1/1/1986 till 31/12/1993. The Labour

Court was justified in relying upon the findings recorded in the award passed in Reference IDA No.34 of 1995.

8. Now coming to the issue of calculations of special allowance for the relevant period i.e. from January 1986 onwards, the workman had given the figure of special allowance for a period of six months as is clear from the annexure to his application. For example in January to June 1986 the applicant had claimed that special allowance was payable at the rate of Rs.466/- per month, for the period from July to December 1986 the same was payable at the rate of Rs.920/- per month and lastly for the period from July to December 1993 the same was payable at the rate of Rs.1184/- per month. Though in the impugned award the learned Judge of the Labour Court has not dealt with the issue of these calculations, Mr.Topkar stated that the calculations furnished by the applicant were never disputed and the same thing applies to the rate of special allowance stated in the application for each of the relevant six months period. The Government notification dated 10th January 1986 issued by the Government of Maharashtra under the Minimum Wages

Act, 1948 and as applicable to the powerloom industry is on record and the applicability of the Minimum Wages Act and the rates payable thereunder is not in dispute. It was contended by Mr.Pakale that the applicant having been employed on piece rate basis, he was not entitled for payment of special allowance. Onus was on the employer to prove that the applicant was in fact employed on piece rate basis. The vouchers which were sought to be submitted before the Labour Court were shown to the applicant and he denied to have signed on any of them and, therefore, this documentary evidence placed by the employer on record was in fact no evidence. Hence the claim that the applicant was working as piece rate worker was rightly rejected by the Labour Court.

. The notification dated 10th January 1986 provides the methodology for the calculation of special allowance by the State Government for the powerloom industry for a period of six months and it is linked to the Consumer Price Index Number for working class (new series), Bombay City. Over and above 184 CPL, the special allowance is payable at the rate of Re.1/- per month per CPI number. For example, if the CPI number for Bombay city was 600,

184 points will be deducted therefrom and for the balance 416 CPI number the employee would be entitled for special allowance at the rate of Re.1/- for each CPI number and this amount will come to Rs.416/-. The notification is clear that the rate of special allowance does not vary from zone to zone though the basic rate of wages varies as such. Mr.Topkar has placed before me a book on the Minimum Wages Act published by the Labour Law Agency, Mumbai and in the said book the rates of special allowance for the Minimum Wages Act, 1948 for almost all the industries have been published and for the powerloom industry for the period from January to June 1986 the rate if 466/- per month for special allowance. It, therefore, appears that the rate of special allowance as set out by the applicant in the annexure to his application was not disputed by the employer.

9. It is also to be noted that the learned Judge of the Labour Court did not consider the claim of the applicant - workman for payment of overtime wages and has in fact reduced the claim made and fixed it at Rs.62,380/-. Hence I am satisfied that the determination of the amount payable to the applicant - workman as set out in the impugned order cannot be

faulted with on any count and, therefore, there is no scope to entertain this petition under Article 227 of the Constitution.

10. The petition is hereby rejected summarily.

(B.H.MARL